S.B. CIVIL WRIT PETITION NO.1813/2005

J.K. Cement Works vs. Union of India and others.

Date : 6.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Lekh Raj Mehta) for the petitioner.
Mr. D.D. Thanvi)

Mr. Kamal Dave, for the respondents.

- - - - -

Heard learned counsel for the parties.

Learned counsel for the petitioner, in view of the preliminary objection raised by the respondents, prays that the petitioner may be permitted to withdraw this writ petition so that the petitioner may approach Railway Rates Tribunal, Chennai constituted under Section 33 of the Railways Act before whom complaint lies under Section 36 of the Railways Act. It is further submitted that since the Tribunal is at Chennai, therefore, some time may be granted to the petitioner to prefer complaint along with application for grant of interim stay and till then, the stay order as granted by this Court may be extended.

Learned counsel for the respondents has serious objection about continuation of the stay order on the ground that the petitioner submitted bank guarantee and in view of the Supreme Court judgments, there

cannot be stay orders against invocation of the bank guarantee.

I have considered the submissions of the learned counsel for the parties for continuation of the stay order.

According to the respondents themselves, the recovery against the petitioner is of the year 2003. The amount has not been recovered and no stay was granted by the single judge of this Court (by me) on invocation of bank guarantee by the respondents but the division bench of this court, even after holding that the division bench is not inclined to interfere in the interlocutory order, allowed the petitioner to move application for modification of the order dated 29.3.2005 for the purpose of seeking stay on invocation of bank guarantee and the division bench granted stay on invocation of bank guarantee for one week.

It appears that the objection has been raised by the respondents only because the matter is pending in the Court and they have not recovered for at least more than two years and the insistence for non-continuation of the stay order for the period within which the petitioner may submit the complaint under the Railways Act cannot be appreciated simply because of the reason that by such a short period of one week's time, no fact situation will change looking to

the conduct of even the respondents in the matter of recovery of amount claimed against the petitioner and in view of the spirit of the order passed by the Division Bench.

Accordingly, this writ petition is dismissed as withdrawn with liberty to the petitioner to submit the complaint before the Tribunal.

The respondents shall not invoke the bank guarantee till 13.4.2005.

(PRAKASH TATIA), J.

S.Phophaliya